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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-981

Minnesota Education Association
and Minnesota Community College
Faculty Association

Appellants,

vs.

State of Minnesota; Clarence E.
Harris, in his capacity as
State Commissioner of
Personnel in the Minnesota
State Legislature

Appellees.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

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State of Minnesota; Clarence E. Harris, in his capacity as State Commissioner of Personnel in the Minnesota State Legislature

Appellees.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

The Minnesota Education Association and the Minnesota Community College Faculty Association appeal from the judgment of the Supreme Court of the State of Minnesota entered August 24, 1979, reversing an award of the District Court of Ramsey County, Minnesota and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Minnesota is reported in 282 N.W.2d 915 (1979). The opinions of the District Court for Ramsey County are not reported. Copies of all opinions are attached hereto as Appendix A.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 United States Code, § 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Japan Line, Ltd. v. County of Los Angeles*, 99 S.Ct. 1813, 1817 (1979); *Cohen v. California*, 403 U.S. 15, 17-18 (1971).

QUESTION PRESENTED

Is a statute which is interpreted to permit final and binding interest arbitration as to non-state public employees but not as to state public employees valid under the Equal Protection Clause of the Fourteenth (14th) Amendment to the United States Constitution.

STATUTES INVOLVED

This appeal involves the validity under the Fourteenth Amendment of the United States Constitution of provisions of the Minnesota Public Employment Labor Relations Act of

1971, as amended, (hereinafter "PELRA"), Minn. Stat. §179.61 et. seq. and specifically PELRA §179.74 subd. 5 which provides:

> The commissioner of personnel is authorized to and may enter into agreements. The provisions of said agreements which establish wages and economic fringe benefits shall be submitted to the Legislature to be accepted, rejected or modified. . . .

Other statutory provisions which are relevant to the appeal are PELRA § 179.63, subd. 4 (1976), which provides:

> "Public employer" or "employer" means the State of Minnesota and its political subdivisions and any agency or instrumentality of either . . .

PELRA §179.69, subd. 5:

> In the event the employer and exclusive representative fail to execute a contract pursuant to subdivision 4, they shall each submit their respective final positions on those terms and conditions of employment not agreed upon by the parties to the Director . . . Either or both parties except for central employees may after this time petition the Director for binding arbitration stating that an impasse has been reached and the Director has determined that further mediation efforts under subdivision 1 of this section would serve no purpose. If the employer is petitioned for binding arbitration, said proceedings shall begin within 15 days thereof and be binding on both parties. The Director shall determine the matters not agreed upon based upon his efforts to mediate the dispute. If the employee representative has petitioned for binding arbitration, the employer shall have 15 days after the Director of Mediation has determined that an impasse has been reached to reject the request or agree to submit matters not agreed upon to binding arbitration. * * *

PELRA § 179.72, subd. 7:

> The arbitration panel or arbitrators selected by the parties shall resolve the issues in dispute between the parties as submitted by the Board, and the panel's decision and order shall be final and binding upon the parties. . . .

PELRA § 179.68 subd. 2:

"public employers, their agents or representatives are prohibited from:

> (1) Interfering, restraining or coercing employees in the exercise of the rights guaranteed in §§ 179.61 to 179.77; . . .
>
> (5) Refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit; . . .
>
> (9) Refusing to comply with the provisions of a valid decision of a binding arbitration panel or arbitrator acting pursuant to §§ 179.61 to 179.77 . . .

Chapter 449 § 5 of the 1977 Session Laws of the Minnesota State Legislature which provides in relevant part:

> Section 4 of Article X of the Professional Staff Agreements, as negotiated between the State Board for Community College Faculty Association shall not be implemented during the 1977-79 biennium and the Agreement is approved as modified. The Board and the Association are directed to agree upon a salary schedule for fiscal year 1978 and for fiscal year 1979, that shall not exceed a salary adjustment of 7% for fiscal year 1978 and a salary adjustment of 7% for fiscal year 1979.

STATEMENT

The constitutional issue presented herein was first raised in Count II of plaintiffs' Complaint.

The Minnesota Community College Faculty Association (MCCFA) is an affiliate organization of the Minnesota Education Association (MEA) and the exclusive representative of the professional staff of the Minnesota Community College system. Since 1973 the MCCFA has negotiated collective bargaining contracts with the State of Minnesota which establish terms and conditions of employment for the community college faculty employees.

Negotiations for the 1977-79 Community College Labor Agreement commenced in April, 1976 between the MCCFA and representatives of the Commissioner of Personnel, the "employer of State employees" under Minnesota Statutes § 179.74 Subd. 2 (1978). Bargaining continued until impasse was reached in February, 1977. The MCCFA then petitioned the Director of the Bureau of Mediation Services for arbitration. Shortly thereafter, the Commissioner agreed to the MCCFA's request, and the Director certified the nine items remaining in dispute to the Public Employment Relations Board. Prior to arbitration the parties voluntarily resolved seven of the disputed items leaving only salary structure and a non-discrimination clause before the arbitration panel. Following a hearing, on May 3, 1977, the arbitration panel unanimously issued its "Final and Binding" award to the parties upon the issues presented to it. In that award, the arbitrators established a 7.5% general salary adjustment for the 1978-79 school year, exclusive of step progressions and lane changes.[1]

[1] Step progressions provide a percentage salary increase to the professional staff members for each year of teaching experiences. Lane changes provide a percentage salary increase to professional staff based upon additional academic achievement. With step progressions and lane changes added, the award would provide an increase for 1977-78 of approximately 10.5% and for 1978-79, of approximately 7.5%.

On May 10, 1977, the MCCFA and the Minnesota State Community College Board executed a written collective bargaining contract for the 1977-79 biennium which implemented in Article X, Section 4, the wage structure resulting from the final and binding arbitration award of the arbitration panel. However, on May 19 and May 20, 1977, the House and Senate of the Minnesota State Legislature, respectively, passed Chapter 449 of the 1977 Session Laws of the Minnesota State Legislature which, in Section 5, negated the salary structure set forth in the arbitration award, and directed a different and lower salary schedule to be implemented. Pursuant to Section 5 of Chapter 449, the Legislature "directed" the MCCFA and the Community College Board "to agree upon a salary schedule for fiscal year 1978 and for fiscal year 1979, that shall not exceed a salary adjustment of 7% for fiscal year and a salary adjustment of 7% for fiscal year 1979". The legislation reducing the arbitration award was subsequently signed into law by the Governor of the State of Minnesota on or about June 8 or 9, 1977.

On or about June 20, 1977, a salary schedule pursuant to the directive of the Legislature, was implemented and inserted within the existing collective bargaining agreement together with the original wage provision which resulted from arbitration to demonstrate that the legislatively mandated salary schedule was being implemented under protest of the MCCFA.

Plaintiffs then brought suit in the District Court of Ramsey County, Minnesota, claiming that by negating the binding arbitration award of the arbitration panel through the enactment of Chapter 499 of the 1977 Legislative Session Laws, the defendants had committed an unfair labor practice under the provisions of Minnesota Statutes § 179.68 Subd. 2 (1), (5) and (9), which provide as follows:

> "Subd. 2. Public employers, their agents or representatives are prohibited from: (1) interfering, restraining or coercing employees in the exercise of the rights guaranteed in Section 179.61 to 179.77;
>
> * * *
>
> (5) refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit;
>
> * * *
>
> (9) refusing to comply with the provisions of a valid decision of a binding arbitration panel or arbitrator acting pursuant to Section 179.61 to Section 179.77."

In addition, plaintiffs' claimed that defendants justification for the refusal to abide by the final and binding arbitration award of the arbitration panel based upon the provisions of Minnesota Statutes § 179.74 Subd. 5 was an unconstitutional denial of equal protection of the law to the plaintiffs under the 14th Amendment to the United States Constitution and the 14th Amendment of the Minnesota State Constitution because it it denied to state employees many of the benefits of Minnesota Statutes § 179.61-179.77 which are enjoyed by all other public employees. The District Court of Ramsey County, Minnesota, first considered this matter on cross motions for summary judgment and, while recognizing the constitutional question raised by plaintiffs, denied both cross motions for summary judgment. (A.-22 to A. 27) The case was then tried before Ramsey County District Judge Edward Mulally, who issued Findings of Fact, Conclusions of Law and an Order for Judgment which found that the arbitration award concerning the wages of the professional staff of the State Community College System represented by the MCCFA for the biennium 2977-79 issued on May 3, 2977, was a valid and final and binding arbitration decision of an arbitration panel pursuant to PELRA. (A.-17) The Court also found that by failing to implement the final and binding arbitration award of May 3, 1977, the State of Minnesota, as a public employer, committed an un-

fair labor practice specifically prohibited by PELRA § 179.68, Subd. 2(9). (A.-17) The Court also found that the case could be decided on its facts and existing law without the resort to considerations of the constitutionality of PELRA § 179.74, Subd. 5 or Minn. Laws 1977, Chapter 449, Section 5. (A-20)

The defendants, State of Minnesota, et al, then appealed to the Minnesota Supreme Court which reversed the District Court award of damages to MCCFA and held that the intent of the Legislature was to reserve the right to review all salary provisions of contracts with State employees, however arrived at. (A.-6) The Minnesota Supreme Court then considered the MCCFA's claim that the Legislature has denied equal protection to State employees by treating them differently than other public employees. The Court recognized that there was no distinction between the jobs performed by State and non-State public employees. (A.-6) The Court then cited what it considered to be the three rational bases for treating the two groups differently, solely on the basis of their employer:

> (1) Governmental power at the state level is separated into distinct branches. In other words, the Legislature may properly decline to be bound in its legislative function by the employees of the executive branch. This separation is not present at the local level.
>
> (2) The size and complexity of state government requires centralized control.
>
> (3) The Legislature's special constitutional responsibilities prevent it from binding itself as to appropriations. (A.6 to A.-7

QUESTIONS PRESENTED ARE SUBSTANTIAL

The construction of PELRA § 179.74, subd. 5, adopted by the Minnesota Supreme Court is unconstitutional because it

denies to all state employees the benefits conferred on all non-state public employees under PELRA § 179.61, et. seq. and more specifically the benefit of final and binding arbitration awards rendered pursuant to PELRA §§ 179.70 and 179.72. The guarantee of equal protection under the United States Constitution requires "equality of application of the laws–that all similar circumstances shall be treated alike." *State v. Northwestern Preparatory School*, 228 Minn. 363, 365, 37 N.W.2d 370, 371 (1949). All citizens of the state have a right to be treated equally under state law without discrimination. To the extent the state undertakes to bestow benefits, privileges or services upon residents of the state, the Equal Protection Clause is a guarantee to all citizens that the state must do so on an equal basis.

While it has long been recognized that the guarantee of equal protection under the United States Constitution does not prohibit a state from making legislative classifications to meet differences in circumstances and situations, nevertheless, the Equal Protection Clause still requires an equality of treatment of the various citizens covered by legislative classifications. As this Court said in *Quaker City Cab Co. v. Pennsylvania*, 277 U.S. 389, 400 (1928):

> . . . The Equal Protection Clause does not detract from the rights of the state justly to exert its . . . power or prevent it from adjusting its legislation to differences in situation or forbid classification in that connection, 'but it does require that the classification be not arbitrary but based upon a real and substantial difference having a reasonable relation to the subject of the particular legislation . . . (citations omitted and emphasis added).

The opinion of the Minnesota Supreme Court recognizes that its construction of PELRA § 179.74 subd. 5 creates two classes of public employees under PELRA. The court also recognized that this classification is not based upon the jobs performed by

state and non-state public employees but rather the two groups are treated differently solely on the basis of their employer. The question before this Court then becomes whether a legislative classification based upon the employer of persons who perform identical jobs has a rational basis. *McGowan v. Maryland,* 366 U.S. 420 (1961); *City of New Orleans v. Dukes*, 427 U.S. 297 (1976).

The three bases set forth by the Minnesota Supreme Court do not meet this test. The first two bases are in direct conflict with each other. To the extent the size and complexity of state government require centralized control, the legislation provides that centralized authority by appointing the Commissioner of Personnel as the employer of state employees and requiring that in all negotiations between the state and exclusive representatives of the employees, the state shall be represented by the Commissioner of Personnel or his representative. PELRA § 179.74 subd. 2 and subd. 3.

Moreover, size and complexity of governmental organizations is relative. In this regard, size and complexity of the governmental unit does not provide a recognizable rational basis for distinguishing between the treatment afforded to the various employees of the governmental units. Thus, while the State of Minnesota government may be substantially larger and more complex than the governmental unit of the smallest city in the State of Minnesota, it is lesser in size and complexity when compared to the largest county government in the State of Minnesota, and perhaps even smaller than city or county governmental units in other states, such as the City of New York, New York or the County of Los Angeles, California. Therefore, size and complexity of a governmental unit alone cannot provide a readily available rational basis for distinguishing the treatment afforded to governmental employees. With respect to the separation of functions at the state level, the Legislature, pursuant to the provisions of PELRA § 179.74 subd. 5 has

agreed to be bound not only with respect to binding arbitration awards but also with respect to all "agreements". The only exceptions to this policy relate to "agreements" which establish wages and economic fringe benefits which are required to be submitted to the Legislature to be accepted, rejected or modified. PELRA § 179.74, subd. 5. Also with respect to the separation of functions at the state leve, there is again no rational basis for distinguishing between state governmental units and other governmental units. Thus, while the State is separated into executive and legislative branches, so are the governmental units for the cities of Minneapolis and St. Paul, and other cities of the first class in Minnesota, which operate with a Mayor as head of an executive branch, and a city council which constitutes the legislative branch.

Thus, the first two reasons are, in fact, premised upon the third rationale set forth by the Minnesota Supreme Court, i.e., the Legislature's special constitutional responsibilities. In essence, the only basis which can be advanced in support of the classification between state and non-state employees is the claimed inability of the Legislature to bind a subsequent legislature. While this may be a correct statement of the Legislature's constitutional position under the Minnesota Constitution, it does not address the issue in this case, i.e., the basis for treating state public employees differently than non-state public employees. If the state is bound under the terms of the statute to the arbitration awards given to non-state public employees, then it must also be bound with respect to state employees since, it must appropriate money to pay the salaries of both groups. While admittedly state employees are directly funded by the Legislature, non-state public employees, especially in education, receive a significant amount of their compensation indirectly through state appropriations to the various local governmental units for which they work.

The rationale for treating state public employees differently

than public employees of other governmental agencies also runs afoul of the fact that government on the local level is a creation of the Legislature. Thus, the Legislature binds itself to arbitration awards affecting local governmental units created by its statutes but is not bound by awards affecting state level governmental units also created by its statutes. This rationale is further strained by the Minnesota Supreme Court's reference to the Legislature's special constitutional responsibilities. Article XIII, § 1 of the Minnesota Constitution provides:

> The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the Legislature to establish a general and uniform system of public schools. The Legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

It is clear, despite this constitutional mandate that the provisions of PELRA § 179.74 subd. 5 as interpreted by the Minnesota Supreme Court do not establish a general and uniform system of public schools. Teachers employed by local school boards are subject to final and binding arbitration. Teachers employed by state agencies are not. There is no rational reason why these employees should be treated differently when their employer is essentially the same, although in the case of "local" school teachers, the employer has delegated this responsibility to its created governmental unit.

It is submitted that the decision of the Minnesota Supreme Court that PELRA §179.74 subd. 5 reserves the right of legislative review and modification of arbitration awards involving state employees is a denial of equal protection to appellants herein. The question presented by this appeal is substantial and ought be decided by this court.

Respectfully submitted,

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No. 300 Ramsey County Sheran, C. J.

Minnesota Education Association
and Minnesota Community College
Faculty Association,

Respondents,

49868 vs.
State of Minnesota, et al,

Appellants.

Endorsed
Filed August 24, 1979
John McCarthy, Clerk
Minnesota Supreme Court

SYLLABUS

Minn. St. 179.74, subd. 5, reserves the right of legislative review and modification of arbitration awards involving state employees, and such reservation is not a denial of equal protection.

Judgment reversed by order of this court of May 1, 1979.

Heard, considered and decided by the court en banc.

OPINION

SHERAN, Chief Justice.

This is an appeal by the State of Minnesota, the State Commissioner of Personnel, and the Legislature, defendants in an unfair labor practice action brought by the Minnesota Education Association and the Minnesota Community College Faculty Association ("MCCFA"). On January 30, 1979, the District Court of Ramsey County awarded judgment and damages to MCCFA in an amount equal to the difference between its 1977 salary arbitration award and a subsequent legislative salary appropriation reducing the award. A hearing was held before this

court on April 26, 1979. On May 1, 1979, an order was issued reversing the damage award of the district court and noting that this opinion would follow.

The MCCFA is the exclusive representative of the professional staff of the Minnesota Community College System and is an affiliate organization of the Minnesota Education Association. The MCCFA has negotiated collective bargaining contracts with the State of Minnesota since 1973.

Negotiations for the contract for community college faculty for 1977-79 began in April, 1976, between the MCCFA and representatives of the State Commissioner of Personnel. An impasse was reached in February, 1977. Salary structure and a non-discrimination clause were submitted to an arbitration panel. On May 3, 1977, the arbitration panel issued an award which provided an overall salary increase of about 18% for 1977-79. This award was then incorporated into a written contract between the MCCFA and the State Community College Board.

The community college faculty contract was then submitted to the Legislature pursuant to Minn. St. 179.74, subd. 5, which provides for legislative review. The interpretation of this statute is the major issue in this case. The Legislature responded on May 19 and 20 by passing Minn. Laws 1977, ch. 449, § 5, which reduced the community college salary increase to 14%, which was the increase granted that year to state university faculty. On about June 20, a salary schedule conforming to ch. 449 § 5 was inserted into the MCCFA collective bargaining contract.

On September 23, 1977, the MCCFA brought an unfair labor practice suit against the state for refusing to comply with a valid arbitration award and alternatively claimed that Minn. St. 179.74, subd. 5 is a denial of equal protection if it authorizes the Legislature to modify an arbitration award. This appeal is from the district court decision that the state had committed

that unfair labor practice.

Minn. St. 179.74, subd. 5, the statute pursuant to which the Legislature reviews collective bargaining contracts with state employees, reads as follows:

> "The commissioner of personnel is authorized to and may enter into agreements. *The provisions of said agreements which establish wages and economic fringe benefits shall be submitted to the legislature to be accepted, rejected or modified.* A state employee whose exclusive representative, as defined by section 179.63, subdivision 6, has not executed an agreement with the state covering wages and economic fringe benefits on or before May 15 of each odd numbered year shall not receive the wage and economic fringe benefit increases provided pursuant to an agreement executed under this subdivision." (Emphasis added)

At issue in this case is whether this statute authorizes arbitrated salary provisions in contracts with state employees to be submitted to the Legislature and modified.[1] The MCCFA takes the position that the word "agreements" in the statute refers only to voluntarily negotiated provisions and not arbitrated provisions, which are binding on the parties and not subject to legislative modification. The claim is that arbitration awards, far from being "agreements," result from an inability to agree. Thus, the MCCFA contends that only the negotiated provisions of its contract were subject to legislative modification and the reduction of the binding, arbitrated provisions is an unfair labor

[1]Our recent decision in City of Richfield v. Local No. 1215, 276 N.W. 2d 42 (Minn. 1979) dealt with arbitration involving non-state public employees and did not necessitate an interpretation of Minn. St. 179.74, subd. 5.

practice.

Two lines of reasoning lead us to a rejection of this contention. First of all, an arbitration award is not the "agreement" that is submitted to the Legislature. The award was in this case and is routinely incorporated into a written contract between the bargaining unit and the state. It is this contract which is submitted to the Legislature, and such a contract is clearly an "agreement" within the meaning of the statute.

Second, and more significantly, it is apparent from the legislative history of Minn. St. 179.74, subd. 5, that the intent of the Legislature was to reserve the right to review all salary provisions of contracts with state employees, however arrived at. Prior to 1971, state employees in Minnesota had no right to engage in collective bargaining. That year, the Legislature passed the Public Employees Labor Relations Act ("PELRA"), which provided a comprehensive structure for labor relations with public employees. In this original statute, the Legislature specifically reserved the right to review all portions of state collective bargaining contracts. The original version of 179.74, subd. 5, stated:

> "The negotiating team is authorized to and may enter into tentative agreements to be submitted to the legislature."

In fact, under this original PELRA, all public employers had the right to reject arbitration awards. Minn. St. 1971, § 179.72, subd. 7 and 9.

In 1973, Minn. St. 179.74, subd. 5, was enacted in its present form, absent the last sentence, which was added in 1977. This change went along with an important revision of the PELRA. The right to reject arbitration awards was taken away from public employers. Minn. St. 1973, § 179.72, subd. 7. However, the "employer" of state employees was defined to be the Commissioner of Personnel. Minn. St. 1973, § 179.74, subd. 2. The Commissioner was the person designated to negotiate with state employees. Minn. St. 1973, § 179.74, subd. 4. Thus, it appears

that the 1973 revisions were designed to make arbitration binding on all public employers. It seems, however, that the Legislature exempted itself from that requirement by binding only the state negotiators but not itself. In other words, the executive branch is bound, but the legislative branch reserved the right to review all contracts. Also, § 179.74, subd. 5, as enacted in its current form in 1973, provides that only the financial portions of labor contracts would receive legislative review. This is consistent with a legislative belief that the duty to determine the size of appropriations could not be delegated away.

There is no doubt that everyone involved with the process of collective bargaining with state employees has assumed all along that the Legislature did, in 1973, reserve this right to modify all contracts, including arbitration awards. The author of the 1973 amendments to the PELRA, Representative LaVoy, in explaining § 179.74, subd. 5, to the House Governmental Operations Committee, stated:

> "What we are saying here is that the *Legislature*, being the body which has to appropriate funds for financing our state and running our state, *must make the final decision on all wages and economic fringe benefits to be paid to our state public employees. We still retain that option.*" (Emphasis added)

Subsequent legislatures have obviously assumed the right to modify arbitration awards had been retained in 1973–in 1975 as well as in 1977 the Legislature did just that with the MCCFA award. Minn. Laws 1975 ch. 433 § 11(1). All arbitration awards to state employees are routinely incorporated into written contracts reviewed by the Legislature.

The administrative officials taking part in bargaining have assumed arbitration awards were subject to further review. In fact, even the MCCFA's two principal negotiators have stated publicly that the Legislature retained the right to modify

awards.

The policy reasons behind this retention of legislative authority over otherwise binding arbitration awards are apparent—the necessity for the representatives of the people to retain final control over appropriations and to apply uniform budgetary considerations to numerous bargaining units. Consequently, so we are informed, not a single state legislature in the country is bound by arbitration awards to state employees.[2] Faced with this weight of historical evidence, policy factors, and universal practice, it is not for us to rewrite the PELRA by adopting the undeniably strained interpretation advocated by the MCCFA, even though that group strenuously complains of unfair treatment.

Having decided Minn. St. 179.74, subd. 5 reserves the right of legislative review and modification of arbitration awards involving state employees, we must consider the MCCFA's claims that the Legislature has denied equal protection to state employees by treating them differently than other public employees. Such a legislative classification, which does not involve a fundamental personal right or a suspect classification, will be upheld if it has some rational basis. McGowan v. Maryland, 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961); City of New Orleans v. Dukes, 427 U.S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976). Since, as pointed out by the MCCFA, there is no distinction between the jobs performed by state and non-state public employees, the inquiry must be whether there is a rational basis for treating the two groups differently solely on the basis of their employer. The state offers three such bases, all of which we consider adequate: 1) Governmental power at the state level is separated into distinct branches. In other words, the Legislature may

[2]The MCCFA challenges this assertion as regards Massachusetts.

properly decline to be bound in its legislative function by the employees of the executive branch. This separation is not present at the local level. 2) The size and complexity of state government require centralized control. 3) The Legislature's special constitutional responsibilities prevent it from binding itself as to appropriations.

We find the third rationale particularly compelling. As the source of sovereign governmental power, the Legislature is able to bind all other groups except a subsequent legislature, and for this reason must necessarily reserve the right to review future arbitration awards of state employees. Consequently, there is no denial of equal protection inherent in Minn. St. 179.74, subd. 5, as interpreted herein.

Because we have concluded that Minn. St. 179.74, subd. 5 is a constitutionally valid statute reserving the right of legislative review and modification of this arbitration award, it follows that Minn. Laws 1977, ch. 449 § 5, which reduced the award from 18% to 14%, is merely an expression of that right and suffers no constitutional infirmity.

Judgment reversed by order of this court of May 1, 1979.

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF RAMSEY — SECOND JUDICIAL DISTRICT

File No. 422630

Minnesota Education Association and Minnesota Community College Faculty Association,

Plaintiffs,

vs.

State of Minnesota; Clarence E. Harris, in his capacity as State Commissioner of Personnel, which position was formerly held by Richard W. Session; and the Minnesota State Legislature,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT.

This case came before the Court for trial commencing September 18, 1978. Plaintiffs were represented by Stephen D. Gordon and Bruce A. Finzen. Defendants were represented by Stephen F. Befort and Barbara Lindsey Sims, Special Assistant Attorneys General. The matter was finally submitted on December 8, 1978.

The Court has adopted much of the material contained in plaintiffs' Findings of Fact and Conclusions of Law and the discussion of the legal issues which is set forth therein in memorandum form.

In this matter it is difficult to discuss the facts and the law without some overlapping and, admittedly, some overlapping does occur. However, in the opinion of the Court, the Findings of Fact and Conclusions of Law are clearly established.

Based upon all of the evidence presented at trial, the arguments of counsel, and the pre-trial and post-trial briefs, the Court makes the following

FINDINGS OF FACT

1. Plaintiff, Minnesota Community College Faculty Association (hereinafter "MCCFA"), is an affiliate organization of the Plaintiff Minnesota Education Association (hereinafter "MEA") and the exclusive representative of the professional staff of the Minnesota Community College System. For a number of years the MCCFA has had collective bargaining contracts with the State of Minnesota Community College Board establishing wages and other terms and conditions of employment of the professional staff of the Minnesota Community College System.

2. The contract currently in effect is for the biennium covering 1977 to 1979. Negotiations for the current contract between the MCCFA and the State of Minnesota began on or about April 30, 1976, and continued until the negotiations were at impasse in February 1977. Thereafter, pursuant to the statutory procedures contained in the Minnesota Public Employment Labor Relations Act (hereinafter "PELRA"), the parties agreed to arbitrate those issues at impasse. Prior to the date of the arbitration there were nine issues at impasse between the parties. However, by the time the arbitration hearing was held the parties had voluntarily settled and reached agreement on seven issues, leaving only the issues of salary structure and the nondiscrimination clause of the contract to be resolved through arbitration.

3. On April 20, 1977, the arbitration hearing was held before a panel of arbitrators selected by the parties, at which time each

party presented testimony and exhibits in support of its respective position on the salary structure and the nondiscrimination clause upon which no agreement had been reached. On May 3, 1977, the arbitration panel unanimously issued its "final and binding" arbitration award to the parties upon the issues of salary stucture and the nondiscrimination clause. In that award the arbitration panel established a 7.5% general wage adjustment for the 1977-1978 school year and a 5% wage adjustment for the 1978-1979 school year, exclusive of step progressions and lane changes. When step progressions, which provide a percentage salary increase to the professional staff members for each year of teaching experience, and lane changes, which provide a percentage salary increase to professional staff based upon additional academic achievement, are added the award provided an increase for the 1977-1978 school year of approximately 10.5% and for the 1978-1979 school year of approximately 7.5%.

4. On May 10, 1977, the MCCFA and the Minnesota State Community College Board executed a written collective bargaining contract for the 1977-1979 biennium which implemented in Article X, Section 4, the wage structure resulting from the "final and binding" arbitration award of the arbitration panel.

5. Subsequently, the arbitration award was submitted to the Minnesota State Legislature for the purpose of obtaining appropriation legislation in order to fund the award.

6. The MCCFA had previously arbitrated a wage provision in the collective bargaining agreement with the Minnesota Community College Board for the 1975-1977 biennium. When that arbitration award was submitted to the legislature, the legislature failed to abide by the award and modified the award and reduced the salary structure ordered by the award. Following the reduction of the 1975 arbitration award, the MCCFA attempted to obtain reinstatement of the arbitration award by engaging in a program of legislative lobbying in the 1976

Legislature. When that legislative lobbying effort failed MCCFA and MEA officers and officials, through a series of discussions among themselves, with members and with the legislative bodies of the MCCFA determined that in the event a future legislature modified an arbitrated wage provision the MCCFA would file an unfair labor practice charge and/or engage in a strike.

7. From 1975 through 1977 there were several conversations between MCCFA officers and officials, MEA officers and officials, and Inter-Faculty Organization (hereinafter "IFO") officials who represented professors in the State University system, and who also negotiate with the State of Minnesota, concerning an unfair labor practice action or strike action that would be taken by the MCCFA if a future legislature set aside an arbitration award.

8. In 1977 the legislative bodies of the MCCFA authorized the filing of an unfair labor practice lawsuit in the event the arbitration award for the 1977-1979 contract was altered by the State Legislature. Specifically, the minutes from the MCCFA delegate assembly of April 15 and 16, 1977, during its annual meeting show that the assembly passed a resolution authorizing the Board of Directors to take court action in the event the legislature rejected the 1977 arbitration decision.

9. Similarly, the minutes from the Executive Committee of the MCCFA which met on May 20, 1977, recommended to the Board of Directors that an unfair labor practice action be taken against anyone whom the attorneys thought appropriate in the event the arbitration award, which had already been issued by that time, should be set aside.

10. Finally, minutes from the meeting of the MCCFA Board of Directors on May 21, 1977, reveal that a resolution was passed authorizing an unfair labor practice lawsuit against any appropriate defendant in the event the arbitration award was set aside for the 1977-1979 biennium.

11. Aside from internal communications and legislative

action, MCCFA officers and officials also communicated an intent to bring an unfair labor practice action if the legislature modified a future arbitration award to individuals connected with the State of Minnesota. The MCCFA President, James Durham, and Executive Director, Ralph Chesebrough, also communicated the MCCFA's intention to file a lawsuit in the event an arbitration award was set aside to the State Chief Negotiator, Charles Swanson, during the negotiations for the 1977-1979 contract. In addition, both Durham and Chesebrough had conversations with various state legislators wherein they stated that the failure of the legislature to abide by the arbitration award would result in either a lawsuit or a strike.

12. Further evidence of the intent of the MCCFA to file a lawsuit exists in the form of newspaper stories which ran in early May 1977, after the arbitration award was issued, which quoted the MCCFA President, James Durham, as stating in the event the arbitration award was rejected by the legislature the MCCFA would file an unfair labor practice lawsuit.

13. On May 19 and May 20, 1977, the House and Senate of the Minnesota State Legislature, respectively, passed Chapter 449 of the 1977 Session Laws of the Minnesota State Legislature, which, in Section 5(1), negated the salary structure set forth in the arbitration award, and directed a different and lower salary schedule to be implemented. The legislature in Section 5 of Chapter 449 directed the MCCFA and the Community College Board "to agree upon a salary schedule for fiscal year 1978 and for fiscal year 1979, that shall not exceed a salary adjustment of 7% for fiscal year 1978 and a salary adjustment of 7% for fiscal year 1979." The legislation reducing the arbitration award was subsequently signed into law by the Governor on or about June 8 or 9, 1977.

14. On or about June 20, 1977, a salary schedule pursuant to the directive of the legislature was implemented and inserted within the existing collective bargaining contract. At the time

the new salary schedule was inserted into the existing contract negotiators for the MCCFA requested that a legend be placed at the bottom of the salary schedule stating that it was being implemented "under protest." At the suggestion of the Chancellor of the Community College System the "under protest" language was not inserted into the contract, and instead the original wage provision ordered by the arbitrators was left in the contract with brackets around it and a legend at the bottom of the page stating that it was the wage provision which was ordered by the arbitrators but negated by the action of the legislature.

15. Article XXIII of the contract between the MCCFA and the Minnesota Community College Board is a complete agreement and waiver clause which provides "that the provisions which establish wages and economic fringe benefits must be submitted to the 70th Session of the Minnesota Legislature for approval prior to implementation." This article was agreed upon (after previously being in issue at the time of impasse) at a time when it was apparent that the wage provision of the contract was going to be submitted for arbitration because the parties were unable to agree voluntarily upon a wage provision. In this context the use of the word "approval" means only acceptance by the legislature in the sense of funding and does not, either explicitly or implicitly, constitute an agreement for the legislature to modify or reject the wage provision submitted to it. In addition, Article XXIII does not specifically address or constitute an agreement not to pursue legal action in the event the wage provision is not approved by the legislature.

16. Article XXIII also requires that both the Community College Board and the MCCFA ". . . pledge their complete and active support toward early affirmative action by the Legislature" and ". . . further agree not to support or seek to modify its terms through legislative action . . . " While defendant's conduct relative to complete and active support of the arbitra-

tion award when it came before the legislature may have been something less than enthusiastic, the Court does not believe that their support or lack of support affects, in any material manner, the ultimate issues before the Court.

CONCLUSION OF LAW I

Certain statutory rights, due to public policy considerations, cannot be waived by a party. Other statutory rights, not considered by public policy to be as fundamental, can be waived upon a showing of clear and unequivocal evidence. *State ex rel. Johnson v. Independent School Dist. No. 810*, 260 Minn. 237, 246, 109 N.W.2d 596, 602 (1961).

PELRA Section 179.72, Subd. 7, specifically states that the decision of an arbitration panel "shall be final and binding upon the parties," and Section 179.68, Subd. 2(9), expressly makes it an unfair labor practice and prohibits employers from "refusing to comply with the provisions of a valid decision of a binding arbitration panel or arbitrator acting pursuant to sections 179.61 to 179.77."

PELRA at Section 179.68, Subd. 1, provides that "Any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in sections 179.61 to 179.77 may bring an action in district court in the county wherein the practice is alleged to have occurred for injunctive relief and for damages caused by such unfair labor practice." This right to bring an unfair labor practice action This right to bring an unfair labor practice action in district court under PELRA for failure to abide by a final and binding arbitration award is, in the opinion of this Court, a right which may be waived. However, a waiver is defined as a voluntary relinquishment of a known right, and there can be no waiver without actual or implied intent to waive. *Cohler v. Smith*, 280 Minn. 181, 189, 158 N.W.2d 574, 579 (1968).

In considering a waiver defense, all evidence of statements and actions of the party against whom the waiver is sought which addresses the issue of waiver must be considered as having a direct bearing upon whether the requisite intent to waive exists. *Local 1142 v. United Electrical Workers*, 247 Minn. 71, 77, 76 N.W.2d 481, 484 (1956); *Perry v. Independent School Dist. No. 696*, 297 Minn. 197, 205-06, 210 N.W.2d 283, 289 (1973).

Because of the similarity between PELRA and the National Labor Relations Act, decisions interpreting the National Labor Relations Act, while not controlling, are helpful and applicable in interpreting PELRA. *International Union of Operating Engineers, Local No. 49, v. City of Minneapolis*, 305 Minn. 364, 368, 233 N.W.2d 748, 752 (1975). Under the National Labor Relations Act a waiver of statutory rights, when permitted, must be demonstrated by "closer and unmistakable" evidence. *Tide Water Associated Oil Co.*, 85 N.L.R.B. 1096, 1098, 24 L.R.R.M. 1518, 1519-520 (1949); *Caravelle Boat Co.*, 227 N.L.R.B., 1355, 1358, 95 L.R.R.M. 1003, 1006 (1977).

Defendants have failed to supply substantial clear and unmistakable evidence of a specific and knowing intent on the part of plaintiffs to waive their right to bring the instant lawsuit alleging an unfair labor practice action by defendants. There is substantial evidence in the record which demonstrates that the intent of plaintiffs to instigate this litigation was expressed long before the alleged unfair labor practice action complained of even occurred.

Although defendants alleged that Article XXIII of the contract between the parties, the complete agreement and waiver clause of the contract, establishes a waiver of the right to bring the instant action, that clause falls short of establishing the requisite intent to waive the right to bring this lawsuit. By agreeing to submit the wage provision of the contract to the legislature for "approval" in Article XXIII, plaintiffs did not

agree that the legislature could reject or modify the arbitrated wage provision, and that article does not constitute a waiver of the right to bring a lawsuit as a result of the modification of the wage provision.

CONCLUSION OF LAW II

1. Pursuant to the Minnesota Public Employment Labor Relations Act (hereinafter "PELRA"), where parties elect to submit unresolved contractual disputes to arbitration pursuant to PELRA Section 179.69, the decision rendered by the arbitration panel is "final" and "binding" upon the parties. PELRA Section 179.72, Subd. 7. Once the arbitration award has been rendered, PELRA Section 179.70, Subd. 3, requires the parties to incorporate the terms of the arbitration decision into a written contract or memorandum of contract.

2. PELRA, in Section 179.68, Subd. 2, sets forth a variety of employer conduct designated as unfair labor practices. One such unfair labor practice contained in Paragraph 9 of Section 179.68, Subd. 2, provides that "public employers, their agents or representatives are prohibited from refusing to comply with the provisions of a valid decision of a binding arbitration panel or arbitrator acting pursuant to Section 179.61 to 179.77."

3. PELRA Section 179.68, Subd. 1, establishes jurisdiction in the district courts to consider unfair labor practice charges brought by a public employee, or employee organization, and authorizes the issuance of appropriate injunctive relief and damages caused by the unfair labor practice.

4. The prohibition against committing the specifically enumerated unfair labor practices in PELRA Section 179.68, Subd. 2, runs against "public employers, their agents or representatives." The term "public employer" is defined in PELRA Section 179.63, Subd. 4, as including "the State of Minnesota and its political subdivisions and any agency or instrumentality of either."

5. The State contends that, pursuant to Minn. Stat. § Subd. 2 (1976), an unfair labor practice may only be committed by public employers or their agents or representatives; that Minn. Stat. § 179.74, Subd. 2, (1976) provides that the employer of state employees, for purposes of the PELRA, shall be the Commissioner of Personnel or his representative; that the enactment of Minn. Laws 1977, ch. 449 § 5, cannot be an unfair labor practice because it is solely an act of the legislature which is not the employer of the Community College faculty and which does not act as an agent or representative of the Commissioner of Personnel in the enactment of legislation.

It appears to the Court that the Community College Faculty is in fact employed by the State of Minnesota and not exclusively by the Commissioner of Personnel. It makes good sense that for purposes of continuity and ease of administration of the PELRA the legislature has designated the Commissioner of Personnel as the employer. But to conclude from the fact of that relatively limited function that the faculty members are not state employees and are thereby precluded from asserting such rights as they may have against any other branch, subdivision, agency or instrumentality of the state government by whom they are employed would be over-technical and unrealistic. They should not be so inhibited.

6. The arbitration award concerning wages of the professional staff of the State Community College system represented by the MCCFA for the biennium 1977-1979 issued on May 3, 1977, was a valid final and binding arbitration decision of an arbitration panel pursuant to PELRA.

7. By failing to implement the final and binding wage arbitration award of May 3, 1977, the State of Minnesota, as a public employer, committed an unfair labor practice specifically prohibited by PELRA Section 179.68, Subd. 2(9).

8. PELRA Section 179.74, Subd. 5, does not constitute an exception to the clear and unambiguous requirement of PELRA

that all final and binding arbitration awards for all public employees must be complied with by the public employer. That section provides:

> "The Commissioner of Personnel is authorized to and may enter into *agreements*. The provisions of said *agreements* which establish wages and economic fringe benefits shall be submitted to the Legislature to be accepted, rejected, or modified." (Emphasis added)

The use of the term "agreements" in Section 179.74, Subd. 5, refers to voluntary bilateral agreements entered into between the parties, and not to arbitrated provisions of contracts. There is nothing in the legislative history of PELRA which would support any conclusion except that all public employees are entitled to have final and binding arbitration awards honored by their employers once the public employer has determined to submit to arbitration. Interest arbitration under the statute would become meaningless if state employees were permitted access to it but then denied any final and binding effect of the award once rendered. Similarly, if an interest arbitration award was rendered meaningless in that fashion, the limited right to strike under PELRA Section 179.64, Subd. 7, would be effectively abrogated, since under that section nonessential employees may only strike if their public employer refuses to submit to interest arbitration or refuses to honor an interest arbitration award. All of these factors would severely undermine the duty of the state as a public employer to bargain in good faith since the state could always agree to submit to arbitration and honor what it considered to be a favorable arbitration award, and reject or modify what it considered to be an unfavorable arbitration award. Clearly, in interpreting the statute the Court is obligated to interpret it in such a manner that all provisions of the statute may be given effect. See Minn. Stat. Section 645.16; *Schaeffer v. Newberry*, 235 Minn. 282, 290, 50 N.W.2d 477, 482 (1951).

9. This interpretation of the word "agreements" in PELRA Section 179.74, Subd. 5, is also consistent with the use of the term throughout the balance of PELRA. PELRA distinguishes between contracts and agreements, by using the word agreements to refer to voluntary bilateral assent to terms by the parties, and contracts to refer to the written document into which such voluntary agreements are placed. See PELRA Section 179.70, Subd. 1 and Subd. 3; PELRA Section 179.72, Subd. 10, and 179.72, Subd. 12.

10. Finally, construing agreements in this manner provides the state with the latitude and control which it appropriately should have over its negotiators in the negotiations process. Clearly, the state has a legitimate interest in reviewing and controlling commitments made in its behalf by state negotiators. However, the same limitations and concerns are not present in the case of binding arbitration since under those circumstances the parties knowingly and voluntarily agree to submit outstanding disputes to arbitration with the knowledge and expectation that both parties will be bound by the result. The parties, in essence, ratify the terms and conditions of the arbitration decision before it is rendered by virtue of the submission of the dispute to the arbitration panel.

11. By the enactment of Minn. Laws 1977, Chapter 449, Section 5, the Minnesota State Legislature did not amend the final and binding arbitration provisions of PELRA nor the unfair labor practice portion of PELRA which prohibits a public employer from refusing to abide by a final and binding arbitration award. See PELRA Section 179.72, Subd. 7, and 179.68, Subd. 2(9). Minn. Stat. Section 645.39 prohibits an implied repeal of an earlier statute by a subsequent statute unless the two laws are irreconcilably in conflict. In addition, the case law makes it clear that before it can be said a later statute is intended to be a substitute for an earlier one there must be an unmistakable intent manifested on the part of the

legislature to make the new act a substitute for the old and to contain all of the law on the subject. See *State v. Sobelman*, 199 Minn. 232, 236, 271 N.W. 484, 486 (1937), and *State v. Target Stores, Inc.*, 279 Minn. 447, 473-74, 156 N.W.2d 908, 925 (1968). In the present case there is not an unmistakable intent manifested by the legislature in the enactment of Minn. Laws 1977, Chapter 449, Section 5, to substitute the provisions of that appropriations bill for the substantive provisions of PELRA Section 179.68, Subd. 2(9), or Section 179.72, Subd. 7.

CONCLUSION OF LAW III

This case may be decided on its facts and existing law without resort to considerations of the constitutionality of PELRA Section 179.74, Subd. 5, or Minn. Laws 1977, Chapter 449, Section 5.

CONCLUSION OF LAW IV

The final and binding arbitration award to the parties upon the issues of salary structure and the nondiscrimination clause issued on May 7, 1977, is binding upon the State of Minnesota, and was not effectively changed, amended, or modified by Minnesota Laws 1977, Chapter 449, Section 5.

CONCLUSION OF LAW V

The professional staff employees of the State of Minnesota Community College System covered by the collective bargaining contract between the parties are entitled to damages to be determined in the amount of the difference between what they have received in wages under the amended wage provision of the collective bargaining contract and what they would have received under the wage provision of the contract pursuant to the arbitration award.

LET JUDGMENT BE ENTERED ACCORDINGLY.

EDWARD D. MULALLY
Judge of District Court

DATED: This 30 day of
January, 1979.

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF RAMSEY — SECOND JUDICIAL DISTRICT

Minnesota Education Association
and Minnesota Community College
Faculty Association,

Plaintiffs,

-vs-

State of Minnesota, Richard W.
Session, both individually and
in his capacity as State
Commissioner of Personnel, and
the Minnesota State Legislature,

Defendants.

MEMORANDUM ORDER

(File No. 422630)

This matter came before this Court at a Special Term on November 28, 1977, on cross-motions for summary judgment.

Stephen D. Gordon, Esq., and Bruce A. Finzen, Esq., of Robins, Davis & Lyons, appeared on behalf of the Minnesota Community College Faculty Association (MCCFA), the exclusive representative of the Minnesota Community College and its parent organization, the Minnesota Education Association (MEA). In addition, Gary Green, Esq., appeared as staff counsel for MEA. Stephen F. Befort, Esq., and Barbara L. Sims, Esq., Special Assistant Attorneys General, appeared on behalf of Defendants Commissioner of Personnel Richard W. Session, the Minnesota Legislature, and the State of Minnesota.

Thomas Triplett, Esq., Minnesota Senate Counsel, also appeared.

Since November 28, 1977, the parties filed numerous memoanda and affidavits addressing the many issues of the action, the most recent of which was Plaintiffs' reply memorandum of January 11, 1978.

Plaintiff's main action challenges the validity of Minn. Laws 1977, Chap. 449, Sec. 5, by which the Minnesota Legislature modified the award of an arbitration panel setting a salary structure for teachers in the Minnesota Community College System. The act was passed subsequent to negotiation and arbitration as hereinafter described:

Specifically, on April 30, 1976, pursuant to Minn. Stat. 179.74 (1976), the MCCFA commenced negotiations with representatives of the Minnesota Community College Board and the Commissioner of Personnel concerning the terms of a collective bargaining agreement for the Minnesota Community College Faculty for the 1977-1978 biennium. Bargaining continued until February 1, 1977, when an impasse was reached and the MCCFA petitioned the Director of the Bureau of Mediation Services for arbitration. Shortly thereafter, the employer agreed to MCCFA's request for arbitration and the Director, in accordance with a statutorily prescribed procedure, certified those terms and conditions of employment not agreed upon to the Public Employment Relations Board. See Minn. Stat. 179.69, Subd. 3 (1976).

Upon certification, the Public Employment Relations Board provided a list of potential arbitrators from which a panel of three arbitrators was selected by the parties pursuant to Minn. Stat. 179.72, Subd. 6 (1976). On May 3, 1977, after conducting a hearing, the arbitration panel issued an award which, inter alia, provided for a "7.5 per cent general (salary) adjustment for 1977-78 and 5 per cent general (salary) adjustment for 1978-79, exclusive of step progression and lane changes." The parties

thereafter met and approved a written contract which incorporated the salary structure resulting from the award of the arbitration panel. Articles XXIII and XXVI of the resultant contract also provided that the agreement was subject to the approval of the Minnesota Legislature.

This contract was then submitted to the Minnesota Legislature for review. By Minn. Laws 1977, Ch. 449 Sec. 5, the Legislature modified the arbitration award as follows:

> Section 4 of Article X of the Professional Staff Agreements, as negotiated between the state board for community colleges and the Minnesota Community College Faculty Association shall not be implemented during the 1977-79 biennium and the agreement is approved as modified. *The board and the association are directed to agree* upon a salary schedule for fiscal year 1978 and for fiscal year 1979, that shall not exceed a salary adjustment of 7 per cent for fiscal year 1978 and a salary adjustment of 7 per cent for fiscal year 1979.
> (Emphasis supplied)

This modification was based not only upon the contract but also upon Minn. Stat. 179.74, Subd. 5, which provides:

> The commissioner of personnel is authorized to and may enter into agreements. The provisions of said agreements which establish wages and economic fringe benefits shall be submitted to the legislature to be accepted, rejected or modified.

The parties thereafter on June 21, 1977, entered into and executed a collective bargaining agreement which incorporated the provisions of Minn. Laws 1977, Chap. 499, Sec. 5.

Plaintiffs' action followed challenging the validity of the Legislature's wage modification. Plaintiffs' motion seeks a judgment on the grounds that the Defendants have committed an unfair labor practice, or alternatively, that the legislation

adopted May 20, 1977, is unconstitutional. Defendants have presently noticed a joint Motion for Summary Judgment, denying Plaintiffs' conclusions and further asserting that Defendants are entitled to judgment on the grounds that Plaintiffs have waived their claims and are therefore estopped from pursuing them.

This Court, finds one issue controlling upon the cross-motions for judgment. Although several statutes indicate that an arbitration award is final and binding upon the parties submitting to that process Minn. Stat. 179.72, Subdiv. 12 provides for altering the terms of an award upon agreement of the parties:

> The parties to an arbitration proceeding may at any time prior to or after the issuance of an order of the arbitration panel, agree and settle upon terms and conditions of employment regardless of the terms and conditions of employment determined by the order. The parties shall, if so agreeing and settling, execute a written contract or memorandum of contract pursuant to Section 179.70, Subdivision 1.

(See also Minn. Stat. 179.68, Subd. 2 (9); 179.72 Subd. 7; 179.70, Subdiv. 3). By all appearances, the incorporation of the legislature's wage modification by the parties in a contract of June 21, 1977, faills within the above statute. Although the Plaintiffs presently and perhaps with great substance assert that the Legislature had no authority to modify the wage provisions, and in fact committed unfair labor practices by doing so, the assertion in itself may not destroy the validity of the subsequent agreement incorporating the modification. (See i.e., *Meyer v. Berlandi*, 53 Minn. 59, 54 N.W. 937 (1893); *Standard Construction Company v. National Tea Company*, 240 Minn. 422, 62 N.W.2d 201 (1953). On the other hand, the memoranda and affidavits submitted by the parties suggest that the Plaintiffs might have been coerced or unduly influenced by the

Defendants to incorporate the modification in the June 21 agreement. (See for example Schneider Affidavit November 23, 1977.) In that connection, Plaintiffs make very compelling arguments regarding the inherent undermining effect of Defendants' alleged conduct on the process of binding arbitration. Plaintiffs contend that the May legislation constitutes a manifest impediment to the legislative spirit of those acts which provide for collective bargaining for state employees and the use of arbitration to compel resolution of conflicts. Indeed, this Court questions the propriety of legislation which in effect says to all public employees that their use of bargaining and submission to the expedited processes of arbitration may be a hopeless charade which an ill-motivated legislature can decide arbitrarily to avoid. However, the Defendants deny coercive conduct and claim a waiver by Plaintiffs by the free inclusion of all disputed provisions into a mutually advantageous contract. Whether or not these various claims are true and whether or not any acts of the Defendants obviated an otherwise binding acceptance of the wage modifications are essentially factual disputes which are not properly determined by summary judgment, but rather by trial on the merits where such contentions can properly be aired and determined.

> "Summary judgment is a 'blunt instrument' and should not be employed to determine issues which suggest that questions be answered before the rights of the parties can be fairly passed upon. It should be employed only where it is perfectly clear that no issue of fact is involved, and that it is not desirable nor necessary to inquire into facts which might clarify the application of the law."
> *Donnay v. Boulware*, 275 Minn. 37, 144 N.W.2d 761 (1966)

Therefore, the cross-motions must be denied. See *Rathbun, v. W. T. Grant Co.*, 300 Minn. 223, 219 N.W.2d 641 (1974); *Burner Service & Combustion Controls, Inc., v. City of Minneapolis*, Minn , 250 N.W.2d 224 (1977).

Thus, the Court, having in mind the arguments of counsel, bases the following order on all proceedings, files and records herein. Now, therefore,

IT IS ORDERED:

1) Plaintiffs' motion for summary judgment is hereby denied;

2) Defendants. motion for summary judgment is hereby denied.

SIDNEY P. ABRAMSON
JUDGE OF DISTRICT COURT

DATED: January 25, 1978.

APPENDIX-B

In the Supreme Court of the
State of Minnesota

Minnesota Education Association
and Minnesota Community College
Faculty Association,
Appellants

vs. No.

State of Minnesota, Clarence E.
Harris, in his official capacity as
State Commissioner of Personnel,
and the Minnesota State Legislature,

Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Minnesota Education Association and Minnesota Community College Faculty Association, the Appellants above-named, hereby appeal to the Supreme Court of the United States from the final order of the Supreme Court of the State of Minnesota, reversing the judgment of the District Court of Ramsey County, filed in this action on August 24, 1979.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

DATED: November 12, 1979.

Stephen D. Gordon
ROBINS, DAVIS & LYONS
1210 Minnesota Building
St. Paul, MN 55101
(612) 224-5884

ATTORNEYS FOR APPELLANTS

STATE OF MINNESOTA)
) SS PROOF OF SERVICE
COUNTY OF RAMSEY)

Stephen D. Gordon, being first duly sworn upon oath, states that on the 12th day of November, 1979, he made service of the attached NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES upon all parties entitled to notice thereof and all parties required to be served have been served, by mailing to them, postage prepaid, via United States mail, a true and correct copy thereof at the following addresses:

Hon. Joan Anderson Growe
Secretary of State
State of Minnesota
180 State Office Building
St. Paul, MN 55103

Hon. Warren Spannaus
Attorney General
State of Minnesota
102 Capitol
St. Paul, MN. 55103

Subscribed and sworn to before me
this 12th day of November, 1979.

Notary Public